Supreme Court, U.S.
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No.

In the Supreme Court of the United States

CHARLES H. McCLATCHY, Jr.
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. THE DECISION BELOW SETS A NATIONAL RULE MERITING THIS COURT'S IMMEDIATE INTERVENTION BECAUSE IT WILL CAUSE IRREPARABLE HARM TO UNITED STATES FARMERS.

2. CERTIORARI IS WARRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH DECISIONS OF OTHER CIRCUITS.

3. CERTIORARI IS WARRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH RELEVANT MISSISSIPPI STATUTORY AND CASE LAW.

STATEMENT PURSUANT TO RULE 29.6

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Charles McClatchy, Jr., respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered April 19, 2001, refusing to reverse and remand a judgment of the United States District Court for the Northern District of Mississippi which committed the Defendant to the custody of the United States Bureau of Prisons.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is published at 249 F.3d 348 (5th Cir. (Miss.) No. 00-60332) styled "United States of America v Charles H McClatchy, Jr", issued on April 19, 2001, and appearing in Appendix "A", attached hereto. A timely Petition for Rehearing was filed and denied by the United States Court of Appeals for the Fifth Circuit on May 25, 2001, and a copy of the Order denying rehearing appears at Appendix "B"

STATEMENT OF JURISDICTION

This Court has jurisdiction of the subject matter and of the parties. The Petition for Writ of Certiorari is timely filed within 90 days after the denial by the United States Court of Appeals of a timely filed Petition for Rehearing. The date of the Order is May 25, 2001. Petitioner invokes this court's jurisdiction under to 28 U. S.C. § 1254.

STATEMENT OF THE CASE

(i) Course of the Proceedings and disposition in the. Court below:

On August 20, 1999, a seven count Indictment was filed in the United States District court for the Northern District of Mississippi, against Charles H. McClatchy, Jr. and Charles B. McElmurray, III. (T, Vol, 1, page 1, R.E. 4) A superseding Indictment was filed on December 8, 1999, against Charles H. McClatchy, Jr. and Charles B. McElmurray, III. (T. Vol. 1, page 36, R.E. 5) References are to volume page, record excerpt and exhibit of trial record.

Trial commenced in Oxford, Mississippi, on January 31, 2000. (T. Vol. 1, page 45, Order Empanelling Jurors) On February 7, 2000, the jury returned a verdict against Charles H. McClatchy, Jr. as to Counts 1, 2, 3, 4, 5, and 7. (R.E. 6) A mistrial was declared as to Count 6. (T. Vol. 1, page 112) The trial court entered a judgment of acquittal as to McElmurray.

The defendant timely filed with the United States Probation Service objections to the Presentence Report. A final judgment of conviction dated April 26, 2000, was entered by the District Court on May 1, 2000. (T. Vol. 1, page 146, R.E. 7) Notice of Appeal was timely filed by the defendant, Charles H. McClatchy, Jr. (Vol. 1, page 152, R.E. 2, R.E.3)

(ii) Statement of Facts:

McClatchy Planting Company is a Mississippi partnership formed January, 1993. The partners

are Charles H. McClatchy, Jr. and Charles B. McElmurray, 111. (Ex. A-1, T. Vol. 6, page 688) The primary business of the partnership was the raising, harvesting and marketing of cotton and soybeans. It previously borrowed money from Peoples Bank of Indianola, Mississippi, in 1993, secured by an FmHA guarantee. (Vol. 6, page 688)

The partnership leased all land upon which the farming operations were conducted. Titles to the various farm land tracts which totaled 1616 acres were leased by the partnership and were vested in various members of the McClatchy family. (i.e., Parks Place, 960 acres total, 866 acres cultivatable, owned by McClatchy, Jr. - 50% and the Estate of Verla McClatchy - 50%) (Part of Waltonia Place, 452 acres, 375 cultivatable, owned by McClatchy, Jr. and his three sisters, one of whom is deceased) D-4 and 5 (T. Vol. 6, page 620-624) (Part of Waltonia Place vested in Jean T. McClatchy, Defendant's aunt (McClatchy Vol. 6, page 687) 375 acres (Vol. 6, page 691).

The lands leased by the partnership were divided into two farm serial numbers as follows: No. 2237 and No, 2837. No. 2237 consists of the 1616 acres of land described above. No. 2837 (Vol. 6, page 691) is now vested in six heirs. The FmHA has no security interest in the crops grown on 2837. At the time of execution of FmHA loans, farm number 2837 was rented to another farmer. (McClatchy, Vol. 6, page 691-692)

The lands were mortgaged to Prudential Insurance Company. (Rutledge, Vol. 5, page 384.) (Belk, Vol. 6, page 621) for $544,000.

On May 2, 1994, the partnership obtained two loans from the FmHA. One was an emergency loan for $261,170 and the other was a 1994 farm operating loan of $200,000. The partnership executed a security agreement dated May 2, 1994. (Ex. A-12) and Financing Statements (Ex. A-14 and A-15) granting to FmHA a security interest in the 1994 crops grown on farm No. 2237. The land descriptions on the documents describe farm serial number 2237 which consisted of the estate of C. H. McClatchy - 866 acres, R. M. and Jean T. McClatchy - 375 acres, and estate of C. H. McClatchy - 375 acres.

On May 2, 1994, the partnership also executed form FmHA 1962-1, Agreement for the Use of Proceeds/Release of Chattel Security. (Ex. A-13, R.E. 10)

The form provides in part as follows:

> a. **When Can Collateral Be Sold to Pay Essential Family Living and Farm Operating Expenses?**
>
> You agree to allow me to sell or exchange crops, livestock, and livestock products planned to be marketed in the regular course of business so that I can pay essential family living and farm operating expenses. Essential expenses are those which are basic, crucial, or indispensable.
>
> You also agree to allow me to feed crops to livestock, if the livestock or livestock products are collateral for the FmHA loan (s).

You also agree to allow me to use livestock for food for my family.

b. **What Happens if Someone Else Has a Security Interest in the Collateral I Sell?**

I understand that the money from the sale of collateral must always be used to pay anyone who has a security interest that comes before FmHA's security interest.

c. **What changes Do Not Require Your Prior Approval?**

I am not required to obtain your permission before I sell, exchange, or dispose of collateral even if the sale will require a change in the "Quantity", "Month", or "Expected Amount of Proceeds" sections on this form. However, is (sic) the sale does result in changes to the "Quantity" section of this Agreement due to higher or lower than expected crop yields or livestock production numbers, I must promptly report this to the County Supervisor. I must also promptly report to the County Supervisor any sale that results in a change to the "Month" or "Expected Amount of Proceeds" section of this form. The County Supervisor will the (sic) change this form accordingly.

d. **Has FmHA Released its Security Interest?**

You consent to all sales, exchanges, and other

> dispositions of collateral listed on this form, so long as I meet the terms of this Agreement. You agree to release your security interest as agreed above. You will provide a formal, written release of Form FmHA 462-12, "Statement of continuation, Partial Release, Assignment, Etc.", of Form FmHA 460-1, "Partial Release", or other appropriate forms approved by your attorneys when I request it.

On May 17, 1994, the partnership obtained a crop production loan from Bank of Ruleville, Mississippi, for $200,000 (Ex. B-1). Before Bank of Ruleville would make the loan, it required the FmHA to subordinate. On May 17, 1994, the FmHA subordinated its liens and security interests to the Bank of Ruleville to the extent of $200,000 principal and accrued interest. (Ex. D-17) FmHA later subordinated to Ruleville for additional $20,000. The FmHA later executed an additional subordination to Ruleville for an additional $20,000. (Belk, T. Vol. 1, page 697) A total was paid to Bank of Ruleville of $238,031.25. (Ex. D-107)

Crop sales of cotton for 1994 production year yielded sales of cotton in 1994 of $202,744.50 and $133,845.70 for 1994 cotton sold in 1995 for total 1994 cotton sales of $336,590.20. (Sandifer, T. Vol. 6, page 649, T. Nored, Vol. 4, page 201) According to witness Sandifer, CPA, 1994 soybeans sales were $19,840.50. (I.D. 7, T. Vol. 6, page 649) Total soybean and cotton crop sales were $356,430.70 for 1994 according to Sandifer's testimony.

The planting company spent $1,461,287.55 on operations for 1994. (Sandifer, T. Vol. 6, page 649, Ex. 7 for identification of defendant) The crop produced a net loss.

The Defendants, McClatchy and McElmurray, were indicted on charges that Defendants did conceal, remove, dispose of and convert the proceeds of sale of the 1994 McClatchy Planting Company cotton and soybean crop which was mortgaged and pledged to the Secretary of Agriculture, Counts 1, and 2 of the Indictment. Counts 3, 4, and 5 relate to "money laundering" of the proceeds of sale.

REASONS FOR GRANTING THE WRIT

McClatchy raises national issues. These issues include important questions affecting the duty of a farmer financed in part by the FmHA in the United States and, in particular the Mississippi Delta, with respect to reporting requirements under federal crop regulations. The issues concern reporting requirements to FmHA upon the sale of cotton and soybean crops, and whether or not the failure to follow reporting requirements and/or contentions of the FmHA with regard to reporting requirements should be criminalized.

The Petition should be granted for three reasons. First, the Fifth Circuit has established an important national rule contrary to a United States Statute. The judgment of conviction sets a national rule requiring a farmer to report sales of crops to FmHA. The overriding issue in this case is what duty does a farmer financed in part by FmHA have to report sale of crops and/or proceeds. Stated differently, what is a farmer's duty to report sales of either cotton or soybean crops to the FmHA, and if he fails to do so, is the failure to report a crime under 18 U.S.C. 658, notwithstanding the fact that the proceeds were used for the purposes for which the FmHA loan was made.

Form 1962-1 is a civil contract between borrower and FmHA concerning the use and reporting of sales proceeds, not a criminal statute. FmHA Form 1962-1 outlines the intended use of crop proceeds and states that both the borrower and the FmHA's name must be listed on any checks, drafts or money orders received by the borrower for the sale of collateral.

The criminal offense for which McClatchy was convicted was the failure to bring the proceeds checks to the FmHA office, report them and then have the checks released. The name of Valley Supply Company (see Indictment) is included on the list of potential purchasers.

The gravamen of § 658 is the conversion of crop proceeds upon which the United States has a mortgage lien or pledge to purposes other than the purposes for which the FmHA loan was made. The evidence is that what McClatchy did with the crop sales proceeds was exactly what was intended under contract Form 1962-1, the FmHA regulations, and the loan documents. He paid crop expenses, prior liens and subordination parties. Section 658 does not prohibit such conduct.

The effect of McClatchy's conviction is to criminalize the failure to (1) take crop proceeds checks to the FmHA, (2) to have them endorsed by FmHA, if payable jointly, and (3) to have the funds released by the FmHA to be utilized for crop production, and to pay prior lien holders and subordination parties. McClatchy is convicted of having failed to perform the intermediate steps prior to payment of permitted expenses. These intermediate steps are not condemned in 18 U.S.C. 658 as crimes.

Second, the Fifth Circuit has entered a decision in conflict with the decision of another United States Court of Appeals. The Fifth Circuit Ruling on page 19 of its opinion states "However, a court's refusal to grant a downward departure may only be reviewed 'if the refusal was based on a violation of the law.' *Id.* (quoting, *United States v. Palmer,* 122 F. 3d 215, 222 (5th Cir. 1997) In other words, this Court may not review such a refusal unless it was based on a misinterpretation of the Sentencing Guidelines." McClatchy's attack on the sentence of the District Court is based upon a misapplication of the sentencing guidelines and not the Court's refusal to grant a downward departure. Cited in Defendant's Brief was *U S. v. Smith,* 186 F.3d 290, 300 (3rd Cir. 1999). The Third Circuit applied "heartland" test to initial sentence determination as opposed to downward departure. Defendant would respectfully contend the "heartland's" analysis applies to initial sentence determination and not simply to a downward departure question. The Fifth Circuit ruling in effect conflicts with that of the Third Circuit Court of Appeals.

Third, the Fifth Circuit has decided an important federal question in a way which conflicts with relevant Mississippi statutory and case law. Defendant's requested jury instructions dealt with Mississippi statutory law stating what must be done to establish a security interest in either crops and/or proceeds. The Fifth Circuit states in part on page 10 of the Opinion that "We find McClatchy's reliance on the State lien statutes unavailing. These State statutes in no way provide a defense to the federal crimes of which McClatchy was convicted. None of the federal statutes under which McClatchy was convicted indicates

that provisions of State lien statutes create a defense to these federal crimes."

Analysis of the Indictment Counts show the United States contend that:

1. members of McClatchy Planting Company partnership failed to follow agency regulations when they sold the 1994 cotton and soybean crops;

2. the crops were sold by borrowers without FmHA's name on the check for sale proceeds and Defendant (borrower) failed to report to FmHA crop proceeds as set forth on the 1962-1 Agreement;

3. the crop sale proceeds for cotton and soybean were concealed by moving the funds from one account to another; and

4. as a result, the Defendant is guilty of conversion of the proceeds of sale of crops upon which the United States held a lien.

Section 658 of Title 18 U.S.C. pertains to property either mortgaged or pledged to farm credit agencies. For a defendant to be convicted under § 658 the property must be validly mortgaged and/or pledged to farm credit agencies. The farm credit agency must comply with the provisions of the applicable state code to perfect its mortgage or pledge (i.e., Uniform Commercial Code Statutes, Mortgage Code sections, etc.). Because a prerequisite to conviction is that a valid mortgage and/or pledge must exist, § 658 by necessary

implication incorporates filing provisions of State law codes. Although not specifically mentioned in the federal code section, the State statutes must be read in conjunction with the federal statute. The conviction conflicts with established Mississippi law. See *In Re Smith* 40 B.R. 648 (U. S. Bankruptcy Court, N.D. Miss. 1984)

The United States must prove the Defendant, with the intent to defraud, knowingly did conceal, remove, dispose of and convert to his use property that is the proceeds of sale of either the 1994 cotton or soybean crop of McClatchy Planting Company which was mortgaged to the Secretary of Agriculture. The proof must reflect that the United States held a lien against the 1994 crop, that McClatchy sold the crops and converted the proceeds of sale of the crop to his own use.

1. The Decision Below Sets A National Rule Meriting This Court's Immediate Intervention Because It Will Cause Irreparable Harm To United States Farmers.

Section 658 of Title 18 of United States Code Annotated provides in part as follows:

Property mortgaged or pledged to farm credit agencies

> Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, ...the Secretary of

> Agriculture acting through the Farmers Home Administration, . . .shall be fined under this title or imprisoned not more than five years, or both; but if the value of such property does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

In order to implement and flesh out § 658, the FmHA has adopted an instruction § 1962.17(b)(1) which provides in part as follows:

> (2) Under all circumstances, sale proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lien holder or which are in excess of the amount due to prior lien holder or which come to FmHA can be used as follows: (Revised 8-26-87, PN 62.)
>
> > (i) The Form FmHA 1962-1 must provide for releases of normal income security so that the borrower can pay essential family living and farm operating expenses. However, proceeds from the sale of basic security will not be used to pay essential family living or farm operating expenses. (Revised 09-01-93, PN 212.)
> >
> > (ii) Essential expenses are those which are basic, crucial or indispensable The following items are guidelines of what normally may be considered essential family living and farm operating expenses;
> > (Revised 04-17-91, SPECIAL PN.)

Partial list ....
Hired Labor
Machinery repair
Farm building and fence repair
Interest on loans and credit or
purchase agreement
Rent on equipment, land, and
buildings
Feed for animals
Seed
Fertilizer
Pesticides, herbicides, and spray
materials
Farm supplies not included above
Livestock expenses, including
medical supplies, artificial
insemination, and veterinarian bills
Machinery hire
Fuel and oil

Additionally, in accordance with § 1962.17(b)(1) of the FmHA Instruction 1962-A, the FmHA has drawn a form to be executed by both borrower and FmHA. The form provides for those items required by 1962.17(b)(1).

The Form 1962-1 and the regulations must be read in conjunction with § 658 of Title 18 United States Code. Section 658 does not specify with detail the obligations and duties of the borrower farmer and the FmHA; however, the FmHA regulations and forms do. *U. S. v. Dobbs,* 63 F.3d 391, 394 (5th Cir. 1995) discusses the use of Form 1962-1. *Dobbs* states that 1962-1 is the form which grants permission from FmHA to sell collateral.

Although 1962-1 contains requirements for the placing of FmHA's name on any checks, drafts or money orders for the sale of collateral, the same form contract permits the sale of collateral by borrower, directs its application to prior lien holders and to parties having a higher lien position than FmHA. In the event of disagreement between borrower and FmHA, FmHA is required to approve payment for prior lien holders, cost of production and family living expenses. (Ex. A-13; R.E. 10)

The Subordination agreement (Ex, A-17; R.E. 10) illustrates graphically the failure of the charge of conversion against Defendant. Under the provisions of the United States subordination agreement and FmHA's contract with McClatchy consisting of the 1962-1 agreement and FmHA regulations, the FmHA was required to release these funds to the Bank of Ruleville. (Ex. A-17; R.E. 12) The Subordination agreement provides:

> The United States of America acting through the Administrator of the Farmers Home Administration (called the "Government") is the owner and holder of the following-described instrument(s) executed by McClatchy Planting, Co. Prt. and. . . . of Sunflower County, State of Mississippi.

Title of Instrument	Date of Instrument	Date Filed	Office Filed
UCC-1	4/17/94	4/18/94	Sec. of State
UCC-1	4/17/94	4/19/94	Sunflower Co. Chancery Clk.

Document File or Book No. Page No.
#0792395
#966

And Bank of Ruleville (called the "Lender") has agreed to loan 200,000.00 to McClatchy Planting Co., Prtshp. and .... (called the "Borrower") for the following purposes:

1994 Crop production expenses.

THEREFORE, in consideration the Lender's agreement to make such loan to Borrower, the Government (1) consents to the Borrower obtaining the loan from the Lender for such purposes, and (2) agree to and does subordinate in favor of the Lender and its successors and assigns its liens or security interests created or evidenced by the above-described instrument(2) insofar as they cover the following-described property and provided the Lender perfects a lien on the property:

1st lien on 1994 row crops
Assignment of final ASCS payments

This subordination is limited to the amount actually loaned by the Lender to the Borrower (principal and accrued interest) for the foregoing purposes and also the amount actually advanced for foreclosure costs and other advances made or to be made by the Lender, for a total limitation not to exceed $209,956.00. . . .

. . . .

> *(NOTE TO LENDER: You are advised to obtain a perfected security interest on the above property. When the indebtedness has been satisfied please mark this form "PAID IN FULL" and return to the Farmers Home Administration at the following address: P. 0. Box 190, Indianola, MS 38751.

The result is that the criminal offense for which McClatchy was convicted was the failure to bring the proceeds checks to the FmHA office, report them and then have the checks released to the Bank of Ruleville for payment (the Bank of Ruleville was later paid). 18 U.S.C. 658 contains no such proscription. McClatchy was not required to follow this practice in 1993 by his lender. (McClatchy testimony, Vol. 4, page 748)

The gravamen of § 658 is the conversion of crop proceeds upon which the United States has a mortgage lien or pledge to purposes other than the purposes for which the FMHA loan was made (i.e., the farmer gambled the money away, bought something, etc.). The evidence is overwhelming in this case, that what McClatchy did with the crop sales proceeds was exactly what was intended under contract Form 1962-1, the FmHA regulations, and the loan documents. He paid crop expenses, prior liens and subordination parties. Section 658 does not prohibit such conduct.

The effect of the Fifth Circuit's ruling is to criminalize the failure to (1) take crop proceeds checks to the FmHA, (2) to have them endorsed, if payable jointly, and (3) to have the funds released by the FmHA to be paid for crop production, prior lien holders and subordination parties. McClatchy is convicted of having failed to perform the

intermediate steps prior to payment of permitted expenses. These intermediate steps are not set forth in 18 U.S.C. 658 as crimes. The provisions of Form 1962-1 are not contained in the section. The violation of 1962-1 gives rise to a civil action for damages, not a criminal prosecution.

II. Certiorari Is Warranted Because The Decision Below Conflicts With Decisions Of Other Circuits.

The Presentence Report adopts a level of 20 pursuant to the grouping so as to apply to all counts. The offense level of 20 applies to offenses described in 2S1.1, laundering of money instruments. (2S1.1 has been applied by the Presentence Report to Counts 3 and 4. Paragraph 61.) The commentary set forth under 2S1.1 provides as follows: "Background: The statute covered by this guideline is part of the Anti-Drug Abuse Act of 1986, and prohibits financial transactions involving funds that are the proceeds of 'specified unlawful activity,' if such transactions are intended to facilitate that activity, or conceal the nature of the proceeds or avoid a transaction reporting requirement. . . ."

The Sentence Report further provides in paragraph 67 that the guideline as established in 2S1.2 U. S. Sentence Guidelines providing for a base offensive level of 17 is applied to Count 5. The commentary for 2S1.2 provides: "Background: The statute covered by this guideline is a part of the Anti-drug Abuse Act of 1986, and prohibits monetary transactions that exceed $10, 000 and involve the proceeds of 'specified unlawful activity' (as defined in 18 U.S.C. § 1956), if the defendant knows that the funds are 'criminally derived property."

The activities of Defendant set forth in Counts 3, 4, and 5 of the Indictments are incidental to the alleged activities of the Defendant in Counts 1, 2, and 7 of the Indictment. The conduct described in Counts 3, 4, and 5 is a typical of the conduct to which 2S1.1 and 2S2.1 of the Sentence Guidelines should be applied. See *Koon v. United States,* 518 U.S. 81, 116 S.Ct. 2035, 135 L.Ed. 2d 392 (1966); *U.S. v. Threadgill,* 172 F.3d 357, 376 (5th Cir. 1999); *U. S. v. Hemmingson,* 157 F.3d 347, 360, 361, 362 (5th Cir. 1998). Further, the proof shows the Defendant did not use any of the allegedly laundered funds to further other criminal activity. The funds were used to pay crop production expenses. (T. Vol. 6, page 714) The conduct described in Counts 3, 4, and 5 of the Indictment is not within the "heartland" of the money laundering guideline for sentencing purposes and such alleged conduct falls "far short of the large scale drug money laundering serious crime contemplated by the Sentencing Commission when it drafted USSG § 2S1.1" and 2S1.2. *U. S. v. Smith,* 186 F.3d 290, 300 (3rd Cir. 1999)

The Court on page 19 of 5th Circuit opinion states "However, a court's refusal to grant a downward departure may only be reviewed 'if the refusal was based on a violation of the law.' *Id*, (quoting *United States v. Palmer,* 122 F.3d 215, 222 (5th Cir. 1997) In other words, this Court may not review such a refusal unless it was based on a misinterpretation of the Sentencing Guidelines." Defendant would point out that his attack on the sentence of the Court is based on a misapplication of the sentencing guidelines or initial choice of the appropriate guideline and not the Court's refusal to grant a downward departure. *U S. v. Smith,* 186

F.3d 290, 298, 300 (3rd Cir. 1999). The Third Circuit applied "heartland" test to initial sentence determination as opposed to downward departure. Defendant would respectfully suggest that the "heartland" analysis applies to initial sentence determination and not simply to a downward departure question.

III. Certiorari Is Warranted Because The Decision Below Conflicts With Relevant Mississippi Statutory and Case Law.

The Court refused defense Instructions numbered 1, 13, 16, 17, 18, 19, 20 and 22. Instruction No. 13 (T. Vol. 1, page 93, R.E. 15) required proof of specific intent. The Defendant contends the crimes for which he is charged are specific intent crimes as defined by the appropriate United States Code section. Instruction No. 16 (T. Vol. 1, page 96, R. E. 17) relates to § 89-7-51 of the Mississippi Code which grants to a landlord a paramount lien. *In Re Findley,* 76 B.R. 547 (Bkrtcy. N.D. Miss. 1987). Instruction No. 17 (T. Vol. 1, page 97, R. E. 18) provides that parties working and/or harvesting crops have a statutory lien under Mississippi Law. *In Re Smith,* 40 B.R. 648 (United States Bankruptcy Court N.D. Mississippi, 1984). Instruction No. 18 (T. Vol. 1, page 98, R.E. 19) instructs the jury under § 75-9-203 that the security agreement must contain a description of the land. *In Re Byrd,* 66 B.R. 261 (Bkrtcy. N.D. Miss. 1986). This relates to the second farm not subject to lien in this case, No. 2827. Instruction No. 20 (T. Vol. 1, page 100, R. E. 21) instructed the jury that FmHA had no security interest in crops grown on farm No. 2827. This instruction is needed because the proof shows that 2827 crops were counted by

the FHA in total production. Instruction No. 19 (T. Vol. 1, page 99, R. E. 20) requested that the Court instruct that FmHA had released its security interest in the 1994 crop. A careful reading of Form 1962-1 indicates that the farmer has the right to sell the crop. The security interest only relates at that point to the. proceeds. Instruction No. 22 (T. Vol. 1, page 102, R. E. 22) is a core defense instruction which must be taken into consideration with the good faith instruction No. 14 (T. Vol. 1, page 94, R. E. 10). The Defendant was not permitted to argue to the jury from Court instructions which defined his statutory duty under Mississippi law to pay prior liens against the 1994 crops.

Denial of these instructions effectively prevented defendant from arguing to the jury under instructions of the Court his theory of defense. (i.e,, that the crop proceeds were used to pay for permitted expenses consisting of prior lienholders, crop production expenses, family expenses and to refute the United State's effort to confuse farm No. 2827 with No. 2237 production). *U. S. v. Zuniga,* 989 F.2d 1109, 1111 (9th Cir. 1993). According to *U. S. v. Newcomb,* 6 F.3d 1129, 1132 (6th Cir. 1993), the failure to give requested theory of defense instructions is reversible error when (1) the instructions are a correct statement of the law, (2) the defense is not substantially covered by other delivered instructions, and (3) the failure to give the instruction impairs the defendant's theory of the case. All are present here. The charge does not address the legal issues from the defendant's perspective, nor was the jury given a correct statement of the law regarding Mssissippi's lien law or defendant's theory of defense.

The requested Instructions dealt with questions presented by Mssissippi statutory law relating to a security interest in either crops and/or proceeds. The court states in part on page 10 of the Opinion that "We find McClatchy's reliance on the State lien statutes unavailing. These State statutes in no way provide a defense to the federal crimes of which McClatchy was convicted. None of the federal statutes under which McClatchy was convicted indicates that provisions of State lien statutes create a defense to these federal crimes."

No federal system for registration of liens, mortgages or pledges affecting title or priority of liens to either crops or the proceeds thereof has been provided by federal law. The UCC has been adopted by every state. The UCC is not preempted by federal law. Article 9 of the UCC can be looked to for answer in the event that federal statute contains no relevant provisions. See *Haynes v. General Electric Credit Corp.* (1977, WD VA) 432 F. Supp. 763, 582 F.2d 869 (CA 4 VA) 18 U.S.C. 658 contains no relevant provisions and, in consequence, UCC provisions should control.

The Defendant would respectfully suggest to the Court that § 658 of Title 18 U.S.C. pertains to property either mortgaged or pledged to farm credit agencies. In order for a defendant to be convicted under § 658 the property must be validly mortgaged and/or pledged to farm credit agencies. This means the farm credit agency must comply with the provisions of the applicable state code to perfect its mortgage or pledge (i.e., Uniform Commercial Code Statutes, Mortgage Code sections, etc.). Because a prerequisite to conviction is that a valid mortgage and/or pledge

must exist, statute 658 by necessary implication incorporates those pertinent provisions of State law codes. In consequence although not specifically mentioned in the federal code section, the State statutes by inference are incorporated therein as a necessary part. The Mississippi Code sections go to the question of the intent of the defendant. See Fifth Circuit Ruling page 10, "Arguably, McClatchy's reliance on the State statutes at the time he converted the pledge crops may raise a question regarding his intent to defraud."

Additionally, the Defendant would point out to the Court that the crimes of which he is charged are specific intent crimes as defined by the appropriate United States Code sections. Striking of the requested instructions took away the core defense instructions of the Defendant, were correct statements of Mississippi law, were not covered by other instructions, and impaired the theory of the case from the standpoint of Defendant. *U. S. v. Newcomb,* 6 F.3d 1129, 1132 (6th Cir. 1993).

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit in this matter.

Dated: August 15, 2001.

Respectfully submitted,

NATHAN P. ADAMS, JR. MB#1132
Attorney for Petitioner

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-60332

FILED
APR 19, 2001

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES H. MCCLATCHY, JR.,

Defendants-Appellant.

Appeals from the United States District Court
for the Northern District of Mississippi, Greenville

Before POLITZ, DeMOSS, and STEWART, Circuit Judges.

CARL E. STEWART, Circuit Judge:

Charles H. McClatchy, Jr. ("McClatchy") appeals his conviction and sentence for conversion of pledged crops, money laundering, engaging in a monetary transaction involving criminally derived property greater than $10,000 in value, and crop insurance fraud. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

McClatchy was convicted in a jury trial on six counts of a seven count indictment involving conversion of pledged crops, money laundering, engaging in a monetary transaction involving criminally derived property greater than S10,000 in value, and crop insurance fraud.[1] The facts giving rise to his indictment and conviction are as follows.

McClatchy and his nephew, Charles B. McElmurray, III ("McElmurray"), were partners in 1994 in a farming partnership called the "McClatchy Planting Company" ("McClatchy Planting" or "the company"). McClatchy Planting planted, grew, and sold cotton and soybeans near indianola in Sunflower County, Mississippi.

In the spning of 1994, the company applied for financing with the Farmers Home Administration ("FmHA") and received an emergency loan in the amount of

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[1]Specifically, McClatchy was convicted on two counts of concealment, removal, disposal, and conversion to his own use of crops pledged to the Farmers Home Administration as security for loans, in violation of 18 U.S.C. § 658; two counts of conduct of financial transactions involving proceeds of the specified unlawful activity of crop conversion for the purpose of concealing and disguising the location, source, and ownership of the proceeds in violation of 18 U.S.C. § 1956(a)(1)(B)(i); engaging in monetary transaction in criminally derived property greater than a value of $ 10,000 that was derived from the specified unlawful activity of pledged crop conversion, in violation of 18 U.S.C. § 1957(a); and one count of making false, fictitious, and fraudulent statements and representations as to material facts within the jurisdiction of an agency of the executive branch of the United States Government in violation of 18 U.S.C. § 1001.

$261,170 and a 1994 farm operating loan in the amount of $200,000. At that time, McClatchy and McElmurray executed a security agreement in which they pledged to the FmHA their 1994 crops as collateral for the operating and emergency loans. They also executed Form FmHA 1962-1, Agreement for the Use of Proceeds/Release of Chattel Security ("Form 1962-1"). From 1962-1 outlined the intended use of all crop proceeds, and it also stated that both the borrower's and the FmHA's name must be listed on any checks, drafts, or money orders received by the borrower for the sale of collateral. The company also submitted a farm plan to the FmHA. The operating loan was due in full plus interest on January 1, 1995. The first of seven installments of the emergency loan was also due January Ist.

McClatchy Planting's loan application and its farm plan proposed to farm cotton and soybeans on 1616 acres of land. That land was being rented by the company from McClatchy, the estate of McClatchy's deceased mother, and R.M. McClatchy, The company's farm plan indicated that the expenses for rent totaled $86,960, and McClatchy initially asked that $77,460 be advanced from the loan proceeds for rent, leaving S9,500 to be paid out of crop sales after the harvest. The revised farm plan, on which the loans were based, provided S69,860 in advance rent to be paid immediately from the loan proceeds, leaving only $17,100 of rent that would be paid from crop proceeds after the harvest.

In July 1994, the FmHA agreed to a subordination with respect to a farm operating loan obtained by

McClatchy from the Bank of Ruleville in the amount of $200,000. Under the subordination agreement, McClatchy was required to have the FmHA named as a payee on all checks received from the sale of crops on which the agency had a lien. McClatchy was also required to bring those proceeds checks to the agency's office to be recorded and released.

The government produced evidence that McClatchy converted soybean and cotton sales proceeds, laundered money, engaged in a financial transaction with criminally derived property greater than $ 10,000 in value, and committed crop insurance fraud. The following is a summary of that evidence.

Conversion of Cotton Sales Proceeds (Count 1)

From September 1994 to March 1995, McClatchy sold 823 bales of cotton and received 14 checks, totaling $336,590.20, from Nored Cotton Company ("Nored") in Greenwood. The FmHA was not listed as a payee on any of the checks. The Bank of Ruleville was listed as a payee but received only two of the cotton sales checks, totaling $94,422.29. Two of the cotton sales checks, totaling S18,000, were deposited by McClatchy into the checking account of Valley Supply Company ("Valley Supply"). Valley Supply is a straw company, consisting primarily of a bank account and a post office box controlled by McClatchy. One check, for $ 12,998.50, was endorsed and paid to the mortgagee of McClatchy's farm land. The remaining checks were deposited by McClatchy in a McClatchy Planting bank account located in Greenwood,

Mississippi. The FmHA, though not listed as a payee, endorsed and released only one cotton sales check in the amount of $72,156.79. McClatchy did not take the remaining 13 checks to the FmHA to be released.

Conversion of Soybean Sales Proceeds (Count 2)

During the fall of 1994, McClatchy Planting sold 3630.12 net bushels of 1994 soybeans to Bunge Corporation ("Bunge") for $19,840.50. Bunge made the check payable to McClatchy Planting, the FmHA, and the Bank of Ruleville. McClatchy took the check to the FmHA, which endorsed and released it to the Bank of Ruleville. The check was applied to McClatchy's subordination loan at the Bank of Ruleville. On three other sales to Bunge of the 1994 soybeans, however, McClatchy had Bunge make out checks to Valley Supply. McClatchy deposited the Valley Supply checks, totaling $18,318.80. He later withdrew the proceeds and deposited them in McClatchy Planting's checking account. Neither the FmHA nor the Bank of Ruleville received any of the proceeds.

Money Laundering (Counts 3 and 4)

McClatchy deposited proceeds from soybean sales into the Valley Supply checking account and then issued checks on that account payable to McClatchy Planting and signed "W.H. Wilson." The funds were proceeds from part of the 1994 crop. The following checks from Bunge payable to Valley Supply were handled in this manner: (1) a check in the amount of $2008.54; (2) a check in the amount of $8,466.86; and (3) a check in the amount

of $7,843.40. McClatchy then deposited two of those checks in McClatchy Planting's checking account at the Bank of Ruleville and one in Trustmark National Bank. W.H. Wilson, McClatchy's brother-in-law, testified that he never sold any soybeans, knew nothing about Valley Supply, and never signed any Valley Supply checks.

Engaging in Financial Transaction With Criminally Derived Property Greater Than $10,000 in Value (Count 5)

McClatchy carried out another scheme, similar to the money laundering scheme described above, with respect to a check from Nored for a cotton sale from the 1994 crop. However, the check, which was for $ 13,000, was not made payable to Valley Supply. Nevertheless, McClatchy deposited the check into the Valley Supply checking account. He subsequently withdrew $10,657 of that money with a check, signed"W.H. Wilson," payable to McClatchy Planting and deposited the check into McClatchy Planting's checking account at the Bank of Ruleville.

False Statements to a Federal Agency (Crop Insurance Fraud) (Count 7)

McClatchy obtained federal crop insurance for his 1994 cotton and soybean crops. The premium was $18,481. McClatchy reported to a crop insurance agent that McClatchy Planting had produced 5,149.6 bushels of soybeans in 1994. The insurance coverage was based on a guarantee of 8,230 bushels, and thus McClatchy received an

indemnity, based on a loss of 3,030.4 bushels, for $18,174. The government introduced evidence that McClatchy's actual soybean production was 7,059.88 bushels, thus making his loss $6,904 instead of $18,174.

McClatchy and McElmurray were both indicted and pled not guilty. McElinurray was only charged with conversion of pledged crops while McClatchy was charged with conversion, money laundering, engaging in a financial transaction with criminally derived property greater than $10,000 in value, and crop insurance fraud. The case against them proceeded to trial, and after both sides rested, the defendants moved for a judgment of acquittal. The trial court granted McElmurray's motion but denied McClatchy's. After six hours of deliberations and notes were sent from the Jury to the Judge indicating that the Jurors were having difficulty reaching a unanimous verdict, the Judge gave the jury an Allen charge.[1] Nearly two hours later, the jury returned a partial verdict, finding McClatchy guilty on all but count six of the indictment, which was one of the charges involving false statements to a government agency. The trial court declared a mistrial as to that count.

The trial court sentenced McClatchy to 33 months of imprisonment on each of the counts on which he was convicted. The terms are to be served concurrently and followed by concurrent terms of three years of supervised release on each count. The court further ordered McClatchy

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[1] See Allen v. United States, 164 U.S. 492 (1896). This type of charge urges jurors to "forego their differences and reach a unanimous verdict." United States v. Heath, 970 F.2d 1397, 1406 n.2 (5th Cir. 1992).

to pay restitution to the FmHA in the amount of $282,752.21 and to the Risk Management Agency of the Federal Crop Insurance Corporation in the amount of $18,174. Finally, the court ordered McClatchy to pay a special assessment of $300. McClatchy now appeals his conviction and sentence.

DISCUSSION

1. Sufficiency of the Evidence

McClatchy argues that the jury's verdict and the judgment of conviction against him were against the overwhelming weight of the evidence and insufficient as a matter of law to establish guilt beyond a reasonable doubt. As he moved for a judgment of acquittal at the close of the government's case, the standard of review in assessing McClatchy's sufficiency of evidence challenge is "whether, considering all the evidence in the light most favorable to the verdict, a reasonable trier of fact could have found that the evidence established guilt beyond a reasonable doubt." United States v. Mendoza, 226 F.3d 340, 343 (5th Cir. 2000).

McClatchy claims that the "basic intent" of Form 1962-1 was to allow the farmer to sell crops in the regular course of business, pay essential family living expenses and farm operating expenses, pay anyone with a security interest in the proceeds that had priority over the FmHA, and then pay the FmHA note. McClatchy argues that the other expenses were prior liens with respect to the FmHA lien. Thus, he reasons that after totaling the amounts due on

the loan from the Bank of Ruleville, rent for the tracts of land on which the company operated the farm, family living expenses, 1994 operating expenses, and costs of production, there was simply no money left for the FmHA lien.

McClatchy also points out that the FmHA lien did not apply to farm No. 2827, which is also operated by McClatchy Planting, but only to farm No. 2237. Thus, he argues, production on farm No. 2827 cannot be the subject matter of a conversion charge. He further claims that it is common practice for a farmer to maintain one or more bank accounts for a farm and that he did not draw off or siphon money from the farm's operations.

With respect to the crop conversion convictions in counts one and two, the government argues that McClatchy's intent to defraud was demonstrated by his handling of the soybean and cotton crops. The government points out that McClatchy followed the procedure required by the security agreement with respect to one sale of each crop but failed to obtain a release by the FmHA for the other sales. Also, the government challenges McClatchy's claim regarding the FmHA's standing with respect to other creditors. It asserts that McClatchy's theory that the subordination agreement somehow affected the government's standing to prosecute him for the conversion of the pledged crops is meritless.

Regarding the money laundering charges in counts three, four, and five, the governinent urges that the evidence presented at trial proved McClatchy's guilt beyond a reasonable doubt and that the record is complete as to each

element of those offenses. As to the crop insurance fraud charges in count seven, the government argues that the evidence presented was sufficient for the Jury to find that McClatchy knowingly falsified his soybean production on his crop insurance claim. The government asserts that McClatchy's testimony attempting to challenge this evidence was completely discredited by testimony from his nephew.

As an initial matter, we conclude that the vast majority of the crops involved in the charges against McClatchy were from farm No. 2237, not farm No. 2827, to which the FmHA lien did not apply. McClatchy's own testimony indicates that the 800 bushels of soybeans produced from farm No. 2827 were all retained for seed. Moreover, only 19 bales of the 823 bales of cotton produced by McClatchy Planting came from farm No. 2827.

We fafther find that there was more than sufficient evidence to support the Jury's verdict against McClatchy. McClatchy's criminal purpose is evidenced by his taking two checks to the FmHA to be recorded and released but failing to follow the same procedure with the other checks. The jury could have easily inferred that he properly handled two of the checks so that he would not arouse the FmHA's suspicion and then simply converted the rest of the crop proceeds.

More importantly, the totality of the evidence presented demonstrates that McClatchy carnied out an elaborate scheme whereby he converted and concealed funds that he had pledged to the FmHA. Using the name of his

brother-in-law, who had no knowledge of McClatchy's scheme, McClatchy deposited and withdrew the pledged proceeds from a bank account for a company that he controlled and that consisted of only a bank account and a post office box. Compounding his scheme to "beat the system," McClatchy then made false statements to the crop insurance agent so that he could recover insurance money to which he was not entitled.

The record is replete with evidence regarding the elements of each of the crimes of which McClatchy was convicted. 18 U.S. C. § 658, the crop conversion statute under which McClatchy was convicted, criminalizes the knowing concealment, removal, disposal, or conversion, with intent to defraud, of "any property mortgaged or pledged to, or held by . . . the Secretary of Agriculture acting through the Farmers Home Administration." 18 U.S.C. § 658. The government presented evidence that McClatchy took only two of the crop sales checks, which were pledged to the FmHA, to be released and that he put forth much effort to hide the other checks.

18 U.S.C. § 1956(a)(1)(B)(i), the money laundering statute, criminalizes the knowing concealment or disguising of "the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity." 18 U.S.C. § 1956 (a)(1)(13)(1). The government demonstrated that McClatchy concealed the converted crop proceeds in the Valley Supply checking account and withdrew those funds by forging his brother-in- law's name. 18 U.S.C. § 1957(a) provides that "[w]hoever ... knowingly engages or attempts to engage in a monetary

transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity" shall be subject to criminal penalties. 18 U.S.C. § 1957(a). The government showed that one of the transactions in McClatchy's scheme involved $13,000.

18 U.S.C. § 1001 criminalizes the making of a "materially false, fictitious, or fraudulent statement or representation" to a government agency. 18 U.S.C. § 1001. The government presented evidence that McClatchy Planting sold 7,059.88 bushels of soybean to Bunge but that McClatchy reported to a crop insurance agent that McClatchy Planting had produced only 5,149.6 bushels of soybean in 1994. Thus, McClatchy received insurance money to which he was not entitled.

Also, it is important to note that, in this appeal, McClatchy does not attempt to Fefute the evidence that the government presented at trial, which is overwhelming. Instead, he cites various Mississippi lien statutes and defends his actions by merely asserting that he legitimately exhausted the crop proceeds, leaving nothing for the FmHA's lien. We find McClatchy's reliance on the state lien statutes unavailing. These state statutes in no way provide a defense to the federal crimes of which McClatchy was convicted. None of the federal statutes under which McClatchy was convicted indicates that provisions of state lien statutes create a defense to these federal crimes.

Arguably, McClatchy's reliance on the state statutes at the time he converted the pledged crops may raise a question regarding his intent to defraud. However, as

noted above, the prosecution presented evidence to the jury that McClatchy properly handled two of the proceeds checks and converted and concealed the others. This is a fact from which the jury could have concluded that McClatchy intended to defraud the FmHA. Furthermore, as noted above, McClatchy has wholly failed to address any of the evidence presented regarding the other elements of the cnimes of which he was convicted. Much of that evidence also belies any argument that McClatchy acted without the intent to defraud the FmHA.

Moreover, McClatchy's assertion that he spent the crop proceeds on farm and family expenses is of no consequence. McClatchy converted funds pledged to the FmHA. He simply did as he pleased with the crop proceeds, on which the FmHA had a lien. Furthermore, given the self-dealing involved in McClatchy's operations-he pays rent to himself and his family-his argument that he used some of the money for rent seems specious.

Accordingly, considering all of the evidence in the light most favorable to the verdict, we are unable to conclude that there was insufficient evidence on which to convict McClatchy.

11. Effect of the Co-Defendant's Dismissal

McClatchy claims that because his co-defendant, McElmur-ray, was granted a judgment of acquittal, the verdicts against him on counts one, two, three, and four should be set aside. He argues that because counts one and two of the indictment charge that McClatchy and

McElmurray "aided and abetted each other, with the intent to defraud" and knowingly converted the pledged crops for their use, he should have been dismissed along with McElmurray. According to McClatchy, it is legally inconsistent for one defendant to be convicted and the other to be dismissed in a "joint trial" for aiding and abetting. Thus, he reasons, the charges in counts one and two against him fall. He further concludes that the charges in counts three and four for money laundering should have been dismissed because they are based in part on the allegations of crop conversion from counts one and two, which fail because of their "aiding and abetting" language.

The government asserts that a careful reading of the indictment reveals that both McClatchy and McElmurray were charged in counts one and two as principal and alder and abettor. It also distinguishes a charge of aiding and abetting from a charge of conspiracy. The government further argues that as the case proceeded without McElmurray, the aiding and abetting language became mere surplusage in the indictment. Moreover, the government claims that McClatchy's arguments are specious because the evidence presented at trial demonstrates that he acted alone in committing the crimes charged in the indictment.

McElmurray's acquittal did not compel the acquittal of McClatchy. The federal aider and abettor statute, 18 U.S.C. § 2, states in part: "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal." 18 U.S.C. § 2. The Supreme Court has held that under § 2 the acquittal of the principal does not

require the acquittal of the alder and abettor. Standefer v. United States, 447 U.S. 10, 20 (1980). In Standefer, the Court stated that "[w]ith the enactment of [§ 2], all participants in conduct violating a federal criminal statute are 'principals.' As such, they are punishable for their criminal conduct; the fate of other participants is irrelevant." Id.; see also United States v. Musgrave, 483 F2d 327, 331 (5th CIT. 1973) (finding that the acquittal of a person charged with being the principal does not preclude the conviction of alders and abettors). Thus, the trial court did not err in declining to dismiss McClatchy.

III. Jury Instructions

McClatchy argues that the trial court erred in refusing his requests for various instructions to be given to the jury. This Court reviews a district court's refusal to provide a requested jury instruction for abuse of discretion. United States v. Richards, 204 F.3d 177, 204 (5th Cir. 2000). We will reverse the district court's refusal "only if the requested instruction (1) was a substantially correct statement of the law, (2) was not substantially covered in the charge as a whole, and (3) concerned an important point in the trial such that the failure to instruct the jury on the issue seriously impaired the defendant's ability to present a given defense." Id.

McClatchy has failed to show that the trial court abused its discretion in refusing any of his requested instructions. The substance of the good faith and specific intent instructions that McClatchy requested was adequately covered in the court's charge. Also, the trial court's denial

of McClatchy's request that the court instruct the jury to find him not guilty was not an abuse of discretion given that the court had already denied McClatchy's motion for acquittal. The court likewise did not abuse its discretion in refusing McClatchy's requested instructions containing quotes from various sections of the Mississippi Code pertaining to statutory liens and security interests. As we previously stated, those statutes do not provide a defense to the crimes of which McClatchy was convicted and thus are irrelevant. Furthermore, we find no error in the court's denial of McClatchy's requested instruction containing an excerpt from Form 1962-1. That form had already been admitted into evidence and was available to the jury. With respect to the requested instructions regarding the existence or release of FmHA security interests, the court did not abuse its discretion because those instructions sought comment on the evidence presented.

McClatchy also argues that the trial court failed to instruct the Jury regarding counts six[1] and seven of the indictment. Those counts pertained to the making of false statements to a government agency. According to McClatchy, the instruction as to those counts was not marked as "given" or refused" on the jury charge. Thus, he claims that the jury received no instructions on those counts and that plain error resulted.

The government concedes that the trial transcript does not indicate that the elements of counts six and seven were included in the charge. However, it points out that the omitted instruction set forth the elements to be

[1]The omission of the instruction for count six is irrelevant because McClatchy was not convicted on that count.

proved for the offense charged in those counts and that the indictment, which the jury had, outlined the elements of the crime as well.

McClatchy did not object to the omission of the instructions on counts six and seven. Thus, the conviction on count seven can only be reversed if the omission was plain error. See United States v. Sellers, 926 F.2d 410, 417 (5th Cir. 1991). "Error in a charge is plain only when, considering the entire charge and evidence presented against the defendant, there is a likelihood of a grave miscarriage of Justice." Id. The trial court's omission "does not amount to plain error (unless it could have meant the difference between acquittal and conviction."' United States v. Anderson, 987 F.2d 251, 256 (5th Cir. 1993) (quoting United States v. Contreras, 950 F.2d 232, 240 (5th Cir. 1991)).

The trial court's omission of the elements of the offense charged in count seven does not rise to the level of plain error. As the government points out, the indictment tracks the applicable language of 18 U.S.C. § 1001 and contains all of the essential elements of the offense. Moreover, given the weight of the evidence against McClatchy, it is unlikely that the omission of the elements caused the jury to convict him.

W. Exclusion of Defendant's Exhibits 6 and 7

McClatchy complains of the district court's exclusion of Defendant's Exhibits 6 and 7, which are a compilation of balance sheets, general ledgers, and a schedule of

crops for 1993-1995, A certified public accountant, called by the defense as an expert, collected the data contained in the proffered exhibits. McClatchy claims that these exhibits were important to his core defense and were related to his intent, He asserts that the exhibits demonstrate that all of the crop proceeds were used to pay either rent, prior lien holders, or operating expenses.

The government argues that it was unnecessary to present the entire financial summary of the farm's operation in order to determine whether or not McClatchy committed the offenses charged. Furthermore, the goverrunent points out that the trial court nevertheless allowed extensive testimony by the accountant from the data contained in the excluded exhibits. Thus, the government contends that McClatchy was not prejudiced by the exclusion of the exhibits.

This Court reviews a district court's admission or exclusion of evidence for abuse of discretion. Kona Tech. Corp. v. S. Pac. Transp. Co., 255 F.3d 595, 602 (5th Cir. 2000). "Thus, we will not reverse a district court's evidentiary rulings unless substantial prejudice results to the complaining party." Id. McClatchy has failed to demonstrate the relevance of these exhibits to the crimes with which he was charged. Thus, we do not find that the trial court abused its discretion in excluding them.

V. Explanation of the Absence of Acquitted Co-Defendant

McClatchy claims that the trial court erred in

instructing counsel to make no reference during closing argument to the absence of co-defendant McElmurray. He also complains of the court's statement to the Jury that McElmurray would no longer be participating in the trial and that the court would inform the jury of the status of McElmurray's case after the trial was concluded. Additionally, McClatchy argues that the court's interruption of defense counsel's closing argument to admonish him to refrain from referring to McElmurray was improper. According to McClatchy, the sequence of the court's instructions was extremely prejudicial to his case because (1) the jury was left to speculate about the status of McElmurray's case; (2) McClatchy was prevented from arguing joint partnership conduct in his defense; and (3) the trial court's remarks during McClatchy's closing argument could have been interpreted by the jury as an expression by the court that McClatchy was guilty. The government argues that the trial court's statements regarding the absence of McElmurray cannot fairly be interpreted as an expression by the court of its belief that McClatchy was guilty.

The trial court's statements regarding the absence of the co-defendant were appropriate and were not an indication of an opinion of McClatchy's guilt. Furthennore, the trial court later made the following statement to the jury:

> Do not assume from anything I may have said during the course of this trial that I was trying to express or did express any opinion concerning any of the issues in this case. And except for my instructions to you now on the law, you can disregard anything I may have said during the trial in deciding the facts of the case.

Thus, if the trial court erred in making certain statements regarding the absence of the co-defendant, such error was harmless in light of the above instruction. Moreover, McClatchy has not articulated a statement regarding the absence of the co-defendant that would have been more appropriate than the one given by the trial court.

VI. Allen Charge

McClatchy complains that the trial court improperly gave the jury an Allen charge. Prior to the charge, the jury was apparently having difficulty reaching a verdict. The jury sent two notes to the judge, one inquiring as to the proper method of indicating that it was unable to reach a unanimous decision and another requesting other information. The court informed the jury that it could reach a partial verdict. According to McClatchy, the jury then returned a verdict, which is not in the record, that was declared "no verdict" by the court. Again, the jury sent a note asking what would happen if they were unable to reach a verdict. The trial court subsequently gave the jury an Allen charge, and less than two hours later, it returned with a verdict.

McClatchy claims that, at the very least, the giving of, the charge constituted plain error. However, he does not argue that specific aspects of the charge were prejudicial. Rather, he makes the conclusory assertion that the charge tremendously and prejudicially affected the Jury. He makes slightly more specific arguments regarding the circumstances surrounding the giving of the Allen charge, claiming that those circumstances made the charge unduly coercive.

The government points out that McClatchy's claim on appeal is subject to plain error review because he did not object to the Allen charge. The government also counters that given the complexity of this case, the length of deliberations following the Allen charge, and the discriminating nature of the verdict (the jury did not convict on count six), it cannot he said that the jury was coerced into reaching the verdict.

This Court permits trial courts "to give modified versions of the Allen charge, so long as the circumstances under which the district court gives the instruction are not coercive, and the content of the charge is not prejudicial." United States v. Clayton, 172 F.3d 347, 352 (5th Cir. 1999). The trial court has broad discretion in determining whether an Allen charge will coerce the jury. United States v. Heath, 970 F.2d 1397, 1406 (5th Cir. 1992). Moreover, if a defendant failed to object to the charge at trial, the charge will be reviewed for plain error, and the conviction will not be reversed unless an error ... seriously affect[ed] the fairness, integrity, or public reputation of the judicial proceeding.'" Clayton, 172 F.3d at 351 (quoting United States v. Calverly 37 F.3d 160,164(5th Cir. 1994) (en banc)). McClatchy, through his conclusory allegations and cursory treatment of this issue, simply has not shown that the circumstances surrounding the charge caused the jury to be unduly coerced into reaching a verdict. Rather, he merely repeats the chronology of the events, which is not inherently coercive, and argues coercion. He has not demonstrated error, plain or otherwise.

VH. Sentencing Guidelines

For sentencing purposes and pursuant to

U.S. S. G. § 3DI.2(d), the trial court grouped together the six counts on which the jury found McClatchy guilty. Counts one and two (conversion of pledged crops) required the application of U.S.S.G. § 2B1.1, the general theft guideline, resulting in an adjusted offense level of 16. Counts three and four (money laundering) required the applicaton of U.S.S.G. § 2S1.l(a)(2), which provides an adjusted offense level of 20. Count five (engaging in monetary transaction in criminally derived property greater than $10,000 in value) required the application of U.S.S.G. § 2S1.2, which provides an adjusted offense level of 19. Count seven (false statements to a federal agency) required the application of U.S.S.G. § 2F1.1, the general fraud guideline, which provides an adjusted offense level of 16.

Pursuant to U.S.S.G. § 3D 13(b), the trial court used the offense guideline that produced the highest offense level to compute the applicable guideline range because all of the counts involved offenses of the same general type. Therefore, the court used an adjusted offense level of 20, the level used for money laundering. The offense level of 20, combined with a Criminal History Category of I, produced a sentencing guideline range of 33 to 41 months of imprisonment.

McClatchy argues that his sentence should have been based on U.S.S.G. § 2FI - 1, the fraud guideline. He asserts that the conduct described in counts three, four, and five (money laundering and engaging in monetary transaction in criminally derived property greater than $10,000 in value) is outside of the "heartland" of the money laundering guideline for sentencing purposes. He also claims that the

pertinent conduct falls well short of the type of serious money laundering cases contemplated by the Sentencing Commission when it drafted U.S.S.G. § 2S1.1. McClatchy also complains of the loss calculations of $282,752.21 used for the theft guideline in U.S.S.G. § 2B31. 1. The figure was computed by subtracting the amount of the two crop sales checks that McClatchy actually reported to the FmHA from his total cotton and soybean sales of $374,749.50.

The government asserts that the trial court properly rejected McClatchy's arguments. In considering the objection by McClatchy regarding the use of the money laundering guidelines, the trial court found that this type of case is specifically described in the money laundering statute and also noted that McClatchy's sentence had not been enhanced. The court found no reason to depart from the guidelines regarding money laundening. The court also rejected McClatchy's arguments regarding the loss calculations with respect to the theft guideline. llowcver, the theft guideline was not operative because it provided for an adjusted offense level of 16, which is less than the highest level for all of the offenses.

This Court reviews a trial court's interpretation of the Sentencing Guidelines de nova and its factual findings for clear error. United States v. Huerta, 182 F.3d 361, 364 (5th Cir. 1999). The trial court properly grouped together the six counts on which McClatchy was convicted. See U.S.S.G. § 3D1.2(d); United States v. Powers, 168 F.3d 741, 753 (5th Cir. 1999) (finding that the trial court "was required to 'group' together [the defendant's] fraud and money laundering offenses because those crimes involved

the same victim and involved multiple acts that were linked by a common illegal objective or part of a common scheme").

Also, regarding McClatchy's "heartland" argument, this Court has found that "a court can choose to depart downward where the particular conduct falls outside the 'heartland' of offenses considered by the Sentencing Commission." Powers, 168 F.3d at 753. However, "a court's refusal to grant a downward departure may only be reviewed 'if the refusal was based on a violation of the law. " ' Id. (quoting United States v. Palmer, 122 F.3d 215, 222 (5th Cir. 1997)). In other words, this Court may not review such a refusal unless it was based on a misinterpretation of the Sentencing Guidelines. See Palmer, 122 F.3d at 222. Accordingly, because McClatchy has not shown that the trial court mistakenly applied the Sentencing Guidelines, we cannot review his "heartland" argument.

CONCLUSION

For the foregoing reasons, we AFFIRM McClatchy's conviction and sentence. AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEAL
FOR THE FIFTH CIRCUIT

No. 00-60332

Filed May 25 2001

UNITED STATES OF AMERICA
Plaintiff - Appellee

v.

CHARLES H MCCLATCHY, JR
Defendant - Appellant

Appeals from the United States District Court for the
Northern District of Mississippi, Greenville

ON PETITION FOR REHEARING

Before POLITZ, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is
DENIED

ENTERED FOR THE COURT:

/s/ Carl E. Stewart
United States Circuit Judge

APPENDIX C

AO 245,S Sheet I - Judgment in a Criminal Case

United States District Court
Northern District of Mississippi

UNITED STATES OF AMERICA

V. Case Number 4:99CROO088-001

CHARLES H. MCCLATCHY, JR.
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, CHARLES H. MCCLATCHY, JR., was represented by Nathan P. Adams, Jr..

The defendant was found guilty on count(s) 1,2,3,4,5, and 7 by a jury verdict on February 7, 2000 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S,C. §§ 2 & 658	Converting to His Own Use Crops Pledged to the Secretary of Agriculture	03/15/95	1 and 2

18 U.S.C. § 1956(a)(1)(13)(i)	Money Laundering	12/29194	3 and 4
18 U.S.C. § 1957(a)	Engaging in a Monetary Transaction in Criminally Derived Property Greater than a Value of $ 10,000	09/27/94	5
18 U.S.C. § 1001	False Statements to a Federal Agency	01/11/95	7

As pronounced on April 18, 2000, the defendant is sentenced as provided in pages 1 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $300, for count(s) 1,2,3,4,5, and 7, which shall be due immediately. All criminal monetary penalties to include special assessments, fine, and/or restitution shall be made to the Clerk, U.S. District Court, 911 Jackson Avenue, Room 369, Oxford, MS 38655. Payment shall be tendered in cash, postal money order, or certified bank check only. Personal checks will not be accepted.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 26 day of April, 2000 .

/s/ Neal B. Biggers, Jr.
CHIEF JUDGE, Neal B. Biggers, Jr.
UNITED STATES DISTRICT COURT

Defendant's SSN: 427-66-0426 Defendant's Date of Birth: 12/03/35

Defendant's Mailing Address: 314 North McArthur Circle; Indianola, MS 38751
Defendant's Residence Address: 314 North McArthur Circle; Indianola, MS 38751
Defendant's USM No: 11101-042

A0 245 S Sheet 2 - Imprisonment
Defendant: CHARLES H. MCCLATCHY, JR.
Case Number: 4:99CROO088-001 Judgment—Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 33 months.

Term consists of a term of 33 months on each of Counts 1,2,3,4,5, and 7, to be served concurrently.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons on of before 12:00 noon on May 18, 2000, as notified by the Clerk of the Court.

RETURN

I have executed this Judgment as follows:

_____

_____

Defendant delivered on _____to_____
at_____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendan: CHARLES H. MCCLATCHY, JR.
Case Number: 4:99CR00088-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

Term consists of terms of 3 years on each of Counts 1,2,3,4,5, and 7, all such terms to run concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The above drug testing condition is suspended based on

the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable)

☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

I) The defendant shall not leave the judicial district with out the per-mission of the court or probation officer

2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

6) The defendant shall notify the probation officer 10 days prior to any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed. or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confrim the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

(1) The defendant shall not possess a firearm or other destructive device.

(2) The defendant shall pay any restitution that is imposed by this judgement, and that remains unpaid at the commencement of the term of supervised release.

(3) The defendant shall provide the probation officer with access to any requested financial information.

(4) The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.

AO 245 S Sheet 6 - Restitution and Forfeiture
Defendant: CHARLES H. MCCLATCHY, JR.
Case Number: 4:99CR00088-001 Judgment-Page 5 of 6

RESTITUTION

The defendant shall make restitution to the following persons in the following amounts:

Name of Payee

Sunflower County Farm Services Agency
Box 429
Indianola, MS 38751
Amount: $282,752.21

Federal Crop Insurance Corporation
Risk Management Agency
Fiscal Operations Branch
P.O. Box 419293
Kansas City, MO 64141-6293
ATTN: Linda Kaye
Amount: $18,174.00

Restitution payments shall begin immediately. Any amount that remains unpaid when the defendant begins supervised release shall be paid according to a schedule set by the Court at that time based on the defendant's changed circumstances. The Court determines that the defendant does not have the ability to pay interest and therefore waives the interest requirement pursuant to 18 U.S.C. § 3612(f)(3). Restitution is ordered pursuant to 18 U.S.C. § 3663.

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	20
Criminal History Category:	I
Imprisonment Range:	33 months to 41 months.
Supervised Release Range:	2 to 3 years
Fine Range:	$ 7,500 to S 1,000,000
Restitution:	$ 300,926.21

The fine is waived because of the defendant's inability to pay both a fine and restitution.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

V.

CHARLES H. McCLATCHY, JR. and CHARLES B. McELMURRAY, III

FILED Dec. 8, 1999

CRIMINAL NO. 4:99CR 88-B
18 USC 2
18 USC 658
18 USC 1001
18 USC 1956(a)(1)(B)(i)
18 USC 1957(a)

SUPERSEDING INDICTMENT

The Grand Jury charges that:

COUNT ONE

I. At all times pertinent to this Indictment, McClatchy Planting Company was a Mississippi partnership consisting of two individuals, namely defendants CHARLES H. McCLATCHY, JR. and CHARLES B. McELMURRAY, III, both of whom reside in Sunflower County, Mississippi.

2. On or about May 2, 1994, McClatchy Planting Company obtained from the United States Department of Agriculture, Farmers Home Administration, an emergency loan in the amount of $261,170 and a 1994 farm operating loan in the amount of $200,000.

3. On or about May 17, 1994, McClatchy Planting Company obtained a crop production loan from Bank of Ruleville in Ruleville, Mississippi, in the amount of $200,000, which was subordinated by the Farmers Home Administration, that is Farmers Home Administration agreed for McClatchy Planting Company to repay Bank of Ruleville first.

4. The subordination loan at Bank of Ruleville was extended twice during 1994 for an additional $29,000 loaned to McClatchy Planting Company.

5. According to McClatchy Planting Company's 1994 Farm and Home Plan, the subordination loan at Bank of Ruleville was to be used for various expenses of growing crops of cotton and soybeans, including land rent in the amount of $69,860, to be paid from the loan proceeds.

6. On or about May 2,1994, defendants CHARLES H. McCLATCHY, JR. and CHARLES B. McELMURRAY, III executed security agreements in which they granted to the Farmers Home Administration their 1994 crops as collateral for the 1994 operating and emergency loans. The same day, McCLATCHY and McELMURRAY executed Form FmHA 1962-1, Agreement for the Use of Proceeds/Release of Chattel Security, which outlines in

specific detail the intended use of all crop proceeds during the year and contains the following phrase: "Both FmHA and my name (borrower) must be listed on all checks, drafts, or money orders which I received for the sale of collateral...."

7. During the fall of 1994, McClatchy Planting Company sold 3,630.12 net bushels of 1994 soybeans to Bunge Corporation for a total $19,840.50. The check from Bunge Corporation was made payable to McClatchy Planting Company, Farmers Home Administration and Bank of Ruleville and was used to reduce McClatchy Planting Company's loan at Bank of Ruleville.

8. Also in the fall of 1994, defendants CHARLES H. McCLATCHY. JR. and CHARLES B. McELMURRAY, III, sold an additional 3,429.72 bushels of McClatchy Planting Company's 1994 soybeans to Bunge Corporation in the name of Valley Supply Company, a straw company controlled by CHARLES H. McCLATCHY, JR. and CHARLES B. McELMURRAY, III and consisting primarily of a post office box and a checking account at Valley Bank, in Greenwood, Mississippi.

9. In the fall of 1994, the soybean sale proceeds deposited into Valley Supply Company's checking account were withdrawn by CHARLES H. McCLATCHY, JR. and deposited into McClatchy Planting Company's checking accounts.

10. From on or about September 21, 1994, and

continuing into on or about 1995, defendants CHARLES H. McCLATCHY, JR. and CHARLES B. McELMURRAY, III, sold McClatchy Planting Company's 1994 cotton crop.

11. Among the cotton sale proceeds were two checks issued by W.H. Nored Cotton Company to McClatchy Planting Company totaling $ 18,000 which were first deposited into Valley Supply Company's checking account and then withdrawn by CHARLES H. McCLATCHY, JR. and deposited into McClatchy Planting Company's checking accounts.

12. From on or about September 21, 1994, and continuing to on or about 1995, in the Northern District of Mississippi, CHARLES H. McCLATCHY, JR. and CHARLES B. McELMURRAY, III, aided and abetted by each other, with intent to defraud, knowingly did conceal, remove, dispose of and convert to their own use, property, that is proceeds of McClatchy Planting Company's 1994 cotton crop, which was mortgaged and pledged to the Secretary of Agriculture acting through the Farmers Home Administration as security for McClatchy Planting Company's 1994 farm operating loan and emergency loan, in violation of Sections 2 and 658 of Title 18 of the United States Code.

(nm 5 yrs imprisonment, nm $250,000 fine, or both, plus a term of supervised release of nm 3 yrs)

COUNT TWO

1 - 11 The Grand Jury realleges herein all the allegations set forth in paragraphs 1-11 of Count One of this Indictment.

12. From on or about September 25, 1994, to on or about November 3, 1994, in the Northern District of Mississippi, CHARLES H. McCLATCHY, JR. and CHARLES B. McELMURRAY, III, aided and abetted by each other, with intent to defraud, knowingly did conceal, remove, dispose of and convert to their own use property, that is $ 18,318.80, a portion of the proceeds of McClatchy Planting Company's 1994 soybean crop, which was mortgaged and pledged to the Secretary of Agriculture acting through the Farmers Home Administration as security for McClatchy Planting Company's 1994 farm operating loan and emergency loan, in violation of Sections 2 and 658 of Title IS of the United States Code.

(nm 5 yrs imprisonment, nm $250,000 fine, or both. plus a term of supervised release of nm 3 yrs)

COUNT THREE

1 - 11. The Grand Jury realleges herein all the allegations set forth paragraphs I-I I of Count One of this Indictment.

12. On or about September 29, 1994, in the Northern District of Mississippi, CHARLES H. McCLATCHY, JR. knowingly conducted financial transactions at financial institutions which were engaged in, and the activities of which affected interstate commerce, that is depositing a check from Bunge Corporation payable to Valley Supply Company in the amount of $2,008.54 into the Valley Supply Company checking account at Valley Bank in Greenwood. Mississippi, then issuing a check in the amount

of $2,008.54 drawn on the account of Valley Supply Company payable to McClatchy Planting Company, which was deposited in the checking, account of McClatchy Planting Company at Bank of Ruleville, knowing that the property involved in said financial transactions, that is $2,008.54 of 1994 McClatchy Planting Company soybeans, represented the proceeds of a specified unlawful activity, that is conversion of crops mortgaged and pledged to the Farmers Home Administration as security for loans, knowing that the transactions were designed to conceal and disguise the location, source and ownership of the proceeds of said unlawful activity, in violation of Section 1956(a)(1)(B)(i) of Title 18 of the United States Code.

(nm 20 yrs imprisonment, nm $500,000 fine, or both, plus a term of supervised release of nm 5 yrs)

COUNTFOUR

I - 11. The Grand Jury realleges herein all the allegations set forth in paragraphs 1 - 11 of Count One of this Indictment.

12. From on or about October 10, 1994, to on or about December 29, 1994, in the Northern District of Mississippi, CHARLES H. McCLATCHY, JR. knowingly conducted financial transactions at financial institutions which were engaged in, and the activities of which affected interstate commerce, that is he deposited two checks, one dated October 10, 1994, in the amount of $8,466.86 and the other dated December 22, 1994, in the amount of $7,843.40, from Bunge Corporation payable to Valley Supply

Company into the checking account of Valley Supply Company at Valley Bank in Greenwood, Mississippi, then withdrew portions of said funds and deposited them into checking accounts of McClatchy Planting Company at Bank of Ruleville and Trustmark National Bank of Indianola, Mississippi, knowing that tile property involved in said financial transactions, that is $16,310.26 of 1994 McClatchy Planting Company soybeans, represented the proceeds of a specified unlawful activity, that is conversion of crops mortgaged and pledged to the Farmers Home Administration as security for loans, knowing that the transactions were designed to conceal and disguise the location, source and ownership of the proceeds of said unlawful activity, in violation of Section 1956(a)(1)(B)(i) of Title 18 of the United States Code.

(nm 20 yrs imprisonmment, nm $500,000 fine, or both, plus a term of supervised release of nm 5 yrs)

COUNT FIVE

I - 11. The Grand Jury realleges herein all the allegations set forth in paragraphs I -I I of Count One of this Indictment.

12. From on or about September 21, 1994, to on or about September 27, 1994, in the Northern District of Mississippi, CHARLES H. McCLATCHY, JR. knowingly did engage in a monetary transaction in criminally derived property greater than a value of $10,000 that was derived from specified unlawful activity, that is he did issue a check dated September 27, 1994, drawn on the account of Valley

Supply Company at Valley Bank, payable to McClatchy Planting Company in the amount of $10,657, which check he then deposited in McClatchy Planting Company's checking account at Bank of Ruleville in Ruleville, Mississippi, said funds being a portion of a S13,000 sale of McClatchy Planting Company's 1994 cotton crop which was mortgaged and pledged to the Farmers Home Administration and which the defendant converted to his own use, in violation of Section 1957(a) of Title 18 of the United States Code.

(nm 10 yrs imprisonment, nm $500,000 fine, or both, plus a term of supervised release of nm 5 yrs)

COUNT SIX

On or about October 8, 1996, in the Northern District of Mississippi, CHARLES H. McCLATCHY, JR. knowingly and willfully made false, fictitious and fraudulent statements and representations as to a material fact., and did use false writings knowing the same to contain materially, false, fictitious and fraudulent statements and entries, in a matter within the jurisdiction of the executive branch of the government of the United States, that is within the jurisdiction of the United States Department of Agriculture, National Appeals Division, which was in the process of hearing an appeal of a decision of the Farmers Home Administration, that is in connection with an appeal of the decision of the Farmers Home Administration to deny McClatchy's 1995 application for a farm loan and farm loan sevicing, defendant CHARLES H. McCLATCHY, JR. did submit a letter to the National Appeals Officer dated October 8, 1996, in which he stated that the remainder of his

1994 crop sale proceeds over and above the amount paid as pnincipal and interest on the subordination loan at Bank of Ruleville in Ruleville, Mississippi, was used to pay 1994 land rent, and attached to said letter copies of five checks dated March 24, 1995, in the amount of $29,500; March 24, 1995, in the amount of $32,512.52-; two checks dated April 20, 1995, each in the amount of $3,197.28; and May 28, 1995, in the amount of $9,500, a total of $77,907.08, which he claimed were 1994 land rent payments that he made in 1995 from sales of his 1994 crop, when in truth and in fact, as he then and there well knew, the 1994 land rents had already been paid and the five checks totaling S77,907.08 were ill actuality payments for McClatchy Planting Company's 1995 land rent and were altered to falsley purport to show they were payment of 1994 land rent, all in violation of Section 1001 of Title 18 of the United States Code.

(nm 5 yrs Imprisonment, nm $250,000 fine, or both, plus a term of supervised release of nm 3 yrs)

COUNT SEVEN

On or about January 11, 1995, in the Northern District of Mississippi, CHARLES H. McCLATCHY, JR. did knowingly and willfully make false, fictitious and fraudulent statements and representations as to a material fact in a matter within the jurisdiction of the executive branch of the government of the United States, that is within the Junisdiction of the United States Department of Agriculture, in connection with claims for indemnity for crop loss with Federal Crop Insurance Corporation, the defendant stated on a National Ag Underwriters Production

Worksheet that his 1994 harvested soybean production totaled 5,149.60 net bushels, when in truth and in fact, as he then and there well knew, this statement and representation was false, fictitious and fraudulent, in that his 1994 harvested soybean production actually totaled 7,059.88 net bushels, and that as a result of said false statements, he received indemnity overpayments to which he was not entitled, in violation of Section 1001 of Title 18 of the United States Code.

(nm 5 yrs imprisonment, nm $250,000 fine, or both, plus a term of supervised release of nm 3 yrs)

A TRUE BILL
/s/ illegible
FOR PERSON

/s/ illegible
Asst. UNITED STATES ATTORNEY

A47

GOVERNMENT EXHIBIT A-15 4:99CR88

USDA-FmHA
Form FmHA 1962-1
(Rev. 11-92)

FORM APPROVED
OMB No. 0575-0111

AGREEMENT FOR THE USE OF PROCEEDS/RELEASE OF CHATTEL SECURITY

Name McClatchy Planting Partnership

Page _____ of _____

Date of Security Instrument _____

Period Covered by Agreement 3-31-94 to 3-31-95

Property Description

ASCS Pymts

PLANNED Disposition			Expected Amt. of Proceeds	Use of Proceeds	ACTUAL Disposition			Amt. of Proceeds	Use of Proceeds	Appr'd Yes/No (initial)
Quan.	How	Mo.			Quan.	How	Date			
ADV	CCK	4/94	32246	Operating-32246	CC6 F.Nat	Payment	4 CKS 9195[illegible]	33,470.00	TO FSA Acct. #33470 (44-03)	
Final	CCK	2/95	32246	FmHA until Current Balance EU B						

Property Description

PLANNED Disposition			Expected Amt. of Proceeds	Use of Proceeds	ACTUAL Disposition			Amt. of Proceeds	Use of Proceeds	Appr'd Yes/No (initial)
Quan.	How	Mo.			Quan.	How	Date			
					1 check	Rebate Ind. Gin + Supply Co.	2-27-95	$3,694.26	To the Bank of Ruleville on the 1994 Subordinate	KJ's T.L.L. 3-6
										35

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collecion of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this bruden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0111), Washington, D.C. 20503. Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

BEST AVAILABLE COPY

Property Description

PLANNED (Cutter)

Disposition			Expected Amt. of Proceeds	Use of Proceeds
Quan.	How	Mo.		
Cull 080 lbs	sold	NOV JAN	40660	Harvest - 3754 Rent ~~86,460~~ 9500 Bank - 209966 fmHA crop loan - 183403

ACTUAL

Disposition			Amt. of Proceeds	Use of Proceeds	Appr'd Yes/No (initial)
Quan.	How	Date			
lbs 81666	sold	3/11/95	96 70221 94	Ded. - 3221.02 Bank Rel - 67,000	Yes SP 3/14/95

Property Description

PLANNED

Disposition			Expected Amt. of Proceeds	Use of Proceeds
Quan.	How	Mo.		

ACTUAL

Disposition			Amt. of Proceeds	Use of Proceeds	Appr'd Yes/No (initial)
Quan.	How	Date			

Property Description

PLANNED (Beans)

Disposition			Expected Amt. of Proceeds	Use of Proceeds
Quan.	How	Mo.		
BU 15950	sold	12/94	95,700	Harvest - 8250 fmHA crop loan 85459 or whatever Pd-in-Full ~~fmHA OH - 43114~~ Released for other debts if current 18,877

ACTUAL

Disposition			Amt. of Proceeds	Use of Proceeds	Appr'd Yes/No (initial)
Quan.	How	Date			
5931.74 lbs	Grill	11-15	5931.74	Pd-in-Full	

36

44

Property Description Lorn (1996)

PLANNED Disposition			Ex-pected Amt. of Pro-ceeds	Use of Proceeds	ACTUAL Disposition			Amt. of Pro-ceeds	Use of Proceeds	Appr'd Yes/No *(initial)*
Quan.	How	Mo.			Quan.	How	Date			
						sold	6/24/96	9502.35	Paid to BK of Fairville	

Property Description

PLANNED Disposition			Ex-pected Amt. of Pro-ceeds	Use of Proceeds	ACTUAL Disposition			Amt. of Pro-ceeds	Use of Proceeds	Appr'd Yes/No *(initial)*
Quan.	How	Mo.			Quan.	How	Date			

Property Description

PLANNED					ACTUAL					
Disposition			Expected Amt. of Proceeds	Use of Proceeds	Disposition			Amt of Proceeds	Use of Proceeds	Appr'd Yes/No (initial)
Quan.	How	Mo.			Quan.	How	Date			

AGREEMENT FOR THE USE OF PROCEEDS/RELEASE OF CHATTEL SECURITY

In this Agreement the Farmers Home Administration (FmHA) is referred to as you and your ./s/ McClatchy and_____, the borrower(s), is referred to as *I, me,* and *my*. My contact with you will be through the County Supervisor.

In exchange for loans received from the FmHA, I signed Security Agreements with the United States of America. By signing the Security Agreements, I have given you a security interest in all the property described in the Security Agreements. This property has been listed on this form. This property is called collateral.

Do I Have Written Consent To Sell?

I understand that I must obtain written consent before I can sell, exchange, feed to livestock, consume, or in any way dispose of collateral. This Agreement explains how the money or property received from the sale, exchange, or other disposition of collateral may be used. So long as I meet the terms of this Agreement, this Agreement acts as your written consent to dispose of collateral listed on this Agreement. I understand that this Agreement is not intended to restrict my ability to operate my farm or ranch efficiently. It is intended to describe how I will dispose of collateral and to record the sales, exchanges, or other dispositions of collateral.

What Collateral Will Be Sold?

I have listed on this form all collateral that I expect to sell, exchange, feed to livestock, consume, or otherwise

dispose of between *3-31-94* and *3-31-95*. I understand that you do not expect me to list each animal, bushel, bale, or pound of property I plan to dispose of, but that you expect me to list an approximate number.

What is the Projected Date and Price of Sale?

I have listed the approximate date on which I will dispose of collateral. I understand this can be listed by month, quarter, or whatever period best suits my operation. I have also listed the price I expect to receive and a description of how I plan to use the proceeds. I agree that I will dispose of collateral for its fair market value.

How Do I Project Dates and Prices?

I understand that all dates and figures listed on this form are projections only. You also acknowledge this as part of the Agreement. The figures reflect the crop yields, livestock production numbers, operating expenses, income, and marketing practices that I can reasonably expect, based on my farm records and experience.

The figures are based on my past income, expense, and production levels. You do not require a strict averaging of my past income, expense, and production levels when calculating these projections, and may permit adjustment of those averages to reflect unusually low or high yields, income or expenses that I have had in the past due to circumstances beyond my control. In reaching these figures, you will consider planned changes in my operation.

I understand that the dates and figures used on this form must be consistent with any current Farm and Home Plan or other plan of operation to which you and I have agreed.

When Can Collateral Be Sold to Pay Essential Family Living and Farm Operating Expenses?

You agree to allow me to sell or exchange crops, livestock, and livestock products planned to be marketed in the regular course of business so that I can pay essential family living and farm operating expenses. Essential expenses are those which are basic. crucial, or indispensable.

You also agree to allow me to feed crops to livestock, if the livestock or livestock products are collateral for the FmHA loan(s).

You also agree to alow me to use livestock for food for my family.

What Happens if Someone Else Has a Security Interest in the Collateral I Sell?

I understand that the money from the sale of collateral must always be used to pay anyone who has a security interest that comes before FmHA's security interest.

What Changes Require Your Prior Approval?

I understand that If I want to sell, exchange, or dispose of collateral that is not listed on this form, I must obtain permission from you before I dispose of the collateral.

If I want to dispose of collateral in a way not listed in the "How" section of this form, I must obtain permission from you before disposing of the collateral. For example, if I have listed that all crops will be sold and later decide that some crop is needed for feed, I must obtain permission from you before feeding the crop to the livestock. You must grant permission if this action is necessary to meet essential family living or farm operating needs and if the livestock and livestock products are collateral for the FmHA loan(s).

If I want to use proceeds in a wat not shown on the "Use of Proceeds" section of this form, I must obtain permission from you before the proceeds are used. For example, if I listed that the proceeds from the sale of the crop would be used to pay on my FmHA debt and later find that the money is needed to pay another farm operating expense, I must obtain your permission before that expense is paid. You must grant permission and change the form if the proceeds will be used for essential farm living or operating expenses.

What Changes Do Not Require Your Prior Approval?

I am not required to obtain your permission before I sell, exchange, or dispose of collateral even if the sale will require a change in the "Quantity", "Month", or "Expected Amountof Proceeds" sections on this form. However, is the sale does result in changes to the "Quantity" section of this Agreement due to higher or lower than expected crop yields or livestock production numbers, I must promptly report this to the County Supervisor. I must also promptly report to the County Supervisor any sale that results in a change to the "Month" or "Expected Amount of Proceeds" section of this form. The County Supervisor will the change this form accordingly.

How Do I Request and Report Changes and How are Changes Made?

I may request and report changes on the form by telephone, letter, or visit to the county FmHA. office. A trip to county FmHA office is not always necessary. I understand that when an agreement is reached on a requested change or when I report changes, the County Supervisor must revise

the form, initial and date the change, and mark the form "revised". I will also initial the change.

My initials may be obtained by either (1) mailing a copy to me, or (2) asking me to initial the revised form during my next visit to the FmHA office.

If my requested or reported changes would result in a major change in my operation, the County Supervisor may request that I attend a conference. At that conference, the County Supervisor and I will develop a new Farm and Home Plan and revise this form.

What if You and I Do Not Agree?

If you and I disagree on how to complete or make changes on this form, you must send me a letter which describes the items on which we do not agree. The letter must explain why we do not agree. The letter must also tell me how I may appeal your decision.

Until the appeal is decided, you must release any other proceeds on which you and I have agreed.

When my appeal is decided, the County Supervisor will ask me to sign a new Farm and Home Plan and Form FmHA 1962- 1, which reflects then decision on the appeal.

If I do not sign the new agreement, the County Supervisor will give me a copy of the forms and tell me that the Government considers this Agreement to be binding. If I violate this Agreement, the Government will take the actions described below in the section entitled "What Happens if I Violate This Agreement?".

What Happens if I Do Not Cooperate?

I understand that if I do not appeal or if I refuse to cooperate in completing this Agreement, the County

Supervisor will complete the form, sign it, and send it to me, The County Supervisior must send a letter with the completed form explaining that the Government will consider the form to be binding on me. I understand that if I violate the new agreement, the Government will take the actions described below in the section entitled "What Happens if I Violate This Agreement?".

Who Are the Potential Purchasers of My Farm Products?

This is a list of purchasers who often buy farm products from me. I have included grain elevators, auction barns, and others who I expect might buy from me.

Farm Product	*Potential Purchasers*	*Business Address*
Beans	Bunge	Indianola
	B&C Warehouse	(illegible)
	Valey Supply Co.	Greenwood
Cotton	ASCS	Indianola
	(Nored)? Cotton Co.	Greenweed
	Buford Cotton Co.	Greenwood

I understand that you realize that I do not always know in advance who will buy my product. If I cannot identify specific, potential purchasers, I have described below how the farm products will be sold. For example, if I sell farm products at a roadside stand, by advertising in the newspaper. or to neighbors, the exact method of sale is described below.

Description and Method for Sale

Can I Sell to Purchasers Not Listed on This Form?

I understand that I may sell collateral to purchasers other than those listed on this form. If I do this, then I must immediately notify the County Supervisor of what has been sold and the name and business address of the purchaser. I do not need your prior approval.

Does FmHA's Name Have to be on the Check I Receive?

Both FmHA and my name must be listed on all checks, drafts, or money orders which I receive for the sale of collateral listed on this form unless all FmHA installments for the period of this Agreement have been paid; this includes all past-due installments.

Checks made in accordance with an assignment agreement do not have to include both names.

What Records Must I Keep?

I must keep records of how I actually dispose of collateral and how I use the proceeds. I must provide these records to the County Supervisor on request and at the end of the period covered by this Agreement.

Has FmHA Released its Security Interest?

You consent to all sales, exchanges, and other dispositions of collateral listed on this form, so long as I meet the terms of this Agreement. You agree to release your security interest as agreed above. You will provide a formal, written release of Form FmHA 462-12, "Statement of Continuation, Partial Release, Assignment, Etc.", of Form FmHA 460- 1, "Partial Release", or other appropriate forms approved by your attorneys when I request it.

What Happens if I Violate This Agreement?

If I sell, exchange, or dispose of collateral and use the money in a way not listed in this Agreement without your permission, I will have violated this loan Agreement and the Government's security interest in the collateral will not be released. You will ask me to pay FmHA an amount equal to the value I received for the collateral involved. I understand that if I pay as requested by FmHA or provide enough information to allow the County Supervisor to approve the sale and use of proceeds, this will cure my violation if it is a first offense. I understand that if I do not so cure a first offense, or if I commit a second offense, you may bring legal action against me. I realize that you may start legal procedures to sell all of my other collateral and refer my case for possible criminal action against me. I understand that if I do not pay as requested, FmHA may also request the purchaser of the collateral to pay FmHA.

Who Can See This Agreement?

Unless you are required to do so by law or court order, you will not release this Agreement or information taken from it outside the United States Government to anyone other than me or my representative.

What Happens if my FmHA Loan Accounts are Accelerated?

I understand that your current regulations say that if I receive an Acceleration Notice from you, this Agreement automatically ends and that you will not after wards release any proceeds from the disposition of collateral. However, by signing this form, I do not give up the right to challenge your regulations in court and may claim in court that I am

entitled to the release of proceeds after acceleration.

This signature is tyo acknowledge that I(we) understand this Agreement and will keep to it.

Date:4-12-94

/s/ McClatchy Planting Co.
/s/ C H McClatchy Jr.
/s/ C.B. McElmurray, III
(Borrower)

Date:4-12-94

/s/ Sylvester P(illegible)
(County Supervisor)

APPENDIX F

USDA-FmHA *Position 1 - Chattel Security,*
Form FmHA 460-2 *Position 5 - Real Estate Secturity*
(Rev. *9/88)*

Government Exhibit A-17

SUBORDINATION BY THE GOVERNMENT

The United States of America acting through the Administiator of the Farmers Home Administration (called the "Government" is the owner and holder of the following-described instrument(s) executed by McClatchy Planting, Co., Pr. and _____ of Sunflower County, State of Mississippi

Title of Instrument	*Date of Instrument*	*Date Filed*
UCC- 1	4/17/94	4/18/94
UCC- 1	4/17/94	4/19/94

Office Filed	*Document File or Book No.*	*Page No.*
Sec. of State	#0792395	
Sunflower Co. Chancery Clk.	#966	

And Bank of Ruleville (called the "Lender") has agreed to loan $200,000.00 to McClatchy Planting Co., Prtshp. and _____ (called the "Borrower") for the following purposes:
1994 Crop production expenses

THEREFORE, in consideration the Lender's agreement to make such loan to Borrower, the Government (1) concents to the Borrower obtaining the loan from the Lender for such purposes, and (2) agree to and does subordinate in favor of the Lender and its successors and assigns its liens of security interests created or evidenced by the above-described instrumenti(s) insofar as they cover the following-described property and provided the Lender perfects a lien on that property.

1st lien on 1994 row crops
Assignment of final ASCS payments

RECEIVED NOV 3 1995

This Subordination is limited to the amount actually, loaned by the Lender to the Borrower (principal and accrued interest) for the forgoing purposes and also the amount actually advanced for foreclosure costs and other advances made or to be be made by the Lender, for a total limitation not to exceed $ 209, 956.00 .Any amount which is in excess of this figure will not be covered by this subordination unless prior written consent was obtained from the Government for incurring the expenditure in question. The Lender must incorporate into the borrower's note a statement that the loan will be in default should any proceeds of the loan funds obtained as a result of this subordination be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce in agricultural commodity as explained in exhibit M of Subpart G of Part 1940 of Title 7 of the Code of Federal Regulations.

IN WITNESS WHEREOF, The United States of America has caused this subordination to be signed on the 17th day of May, 1994, pursuant to the delegated authority published in 7 CIR P.art Subpart A.

UNITED STATES OF AMERICA

Witness _____

_____

B Y /s/ Johnny P. Shackelford

JOHNNY P. SHACKELFORD

TITLE District Director- 4

Farmers Home Administration

U. S. Department of Agriculture

*(NOTE TO LENDER: You are advised to obtain a perfected security interest on the above property. When the indebtedness has been satisfied please mark this form "PAID IN FULL" - and return it to the Farmers Home Administration at the following address: P.O. Box 190, Indianola, MS 38751

FmHA 460-2 9/88)

APPENDIX G

§ 658. Property mortgaged or pledged to farm credit agencies

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Farm Credit Administration, any Federal intermediate credit bank, or the Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Administration, the Rural Development Administration any production credit association organized under sections 1131 - 1134m of Title 12, any regional agricultural credit corporation, or any bank for cooperatives, shall be fined under this title or imprisoned not more than five years, or both; but if the value of such property does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both. June 25, 1948, c. 645, 62 Stat. 729; May 24, 1949, c. 139, § 12, 63 Stat. 91; Oct. 31, 1951, c. 655, § 21, 65 Stat. 718; July 26, 1956, c. 741, Title I, § 109, 70 Stat, 667; Oct. 4, 1961, Pub.L.. 87-353, § 3(r), 75 Stat. 774; Nov. 28, 1990, Pub.L. 101-624, Title XXIII, § 2303(e), 104 Stat. 3981; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, §§ 330004(7), 330016(l)(H), (K), 108 Stat. 2141, 2147; Oct. 11, 1966, Pub.L. 104-294, Title VI, § 606(a), 110 Stat. 3511.)